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TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1930

No. 449

E. S. SMITH, APPELLANT,

vs.

W. B. CAHOON, SHERIFF OF DUVAL COUNTY, FLORIDA

APPEAL FROM THE SUPREME COURT OF THE STATE OF FLORIDA

FILED SEPTEMBER 11, 1930

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[fols. a & 1] [Caption omitted]

[fol. 2]

IN CIRCUIT COURT OF DUVAL COUNTY, FOURTH JUDICIAL CIRCUIT

E. S. SMITH, Plaintiff,

vs.

W. B. CAHOON, as Sheriff in and for Duval County, Florida, Defendant

PETITION FOR WRIT OF HABEAS CORPUS—Filed Aug. 21, 1929

To the Honorable Judges of the said Court:

Now comes your petitioner, E. S. Smith, and respectfully represents unto your Honor- that he is detained of his liberty without any authority of law. That on, to-wit: the 21st day of August, A. D. 1929, your petitioner had a preliminary trial upon a warrant charging him as follows:

"E. S. Smith was owning and operating, or controlling, or managing two motor propelled vehicles in said District and County not usually operated on or over rails, but operated upon the public highways of said District, County and the State of Florida, said vehicles being a truck of two and one-half tons capacity, and a trailer of two and one-half tons capacity, and he used said motor vehicles in the business of transporting property for compensation over public highways in the State and between fixed termini and over regular routes, such routes being from Jacksonville to Melbourne and return on Monday, from Jacksonville to Titusville and return on Wednesday, from Jacksonville to Fernandina and return on Thursday morning, from Jack-
[fol. 3] sonville to Vero Beach, and from there to Ft. Pierce, leaving Jacksonville every Thursday afternoon, and returning to Jacksonville on Friday. Said trips are made each week. The said Smith has not made any application for certificate of public convenience and necessity, and he has not received from the Railroad Commission of the State of Florida a certificate that the present or future public

convenience and necessity requires, and will require, such operation. The said Smith has not paid to the Comptroller $150.00, as an advance payment upon mileage tax required and levied, for the operation of said vehicles, all of which is a violation of Chapter 13700, Laws of the State of Florida, 1929,"

and at said trial after testimony taken petitioner was bound over and committed for trial in the Criminal Court of Record in and for Duval County, and is now unlawfully deprived of his liberty in the custody of the said Sheriff. And petitioner submits:

First. That the evidence taken at said trial and attached hereto and made a part hereof, fails to show a violation of any law of the State of Florida.

Second. That Chapter 13700, Laws of the State of Florida, 1929, is invalid, null, void and unconstitutional.

(A) Because said legislation denies to petitioner his rights of acquiring, possessing and protecting his property guaranteed to him by Sec. 1, of the Declaration of Rights of the Constitution of the State of Florida.

(B) Because the said Act undertakes to deprive petitioner of his property without due process of law in violation of Sec. 12, of the Declaration of Rights of the Constitution of the State of Florida, and the 14th Amendment to [fol. 4] the Constitution of the United States.

(C) Because said legislation is arbitrary, unreasonable and constitute an unreasonable classification.

(D) Because said Act denies to petitioner the equal protection of the laws as guaranteed to him by Sec. 1, of the Declaration of Rights of the Constitution of the State of Florida, and the 14th Amendment to the Constitution of the United States.

(E) Said Act would deprive petitioner of his liberty without due process of law.

(F) Because the said tax attempted to be imposed upon petitioner and all who are similarly situated is arbitrary, unreasonable, discriminatory and amounts to confiscation.

(G) Said Act does not apply to all who are similarly situated equally.

(H) Said Act impairs the obligation of a contract between the petitioner and the State of Florida, and between the petitioner and those with whom he has contracted to do hauling in violation of Sec. 17 of the Declaration of Rights of the Constitution of the State of Florida, and Sec. 10, of Art. 1, of the Constitution of the United States.

(I) Said Act violates Secs. 20 and 21 of Art. 3, of the Constitution of the State of Florida, in that it imposes a tax for the specific purpose of revenue and not for regulation, and should apply to all trucks, trailers and busses alike, or based upon some reasonable classification.

(J) Said Act violates Secs. 1 and 5, of Art. 9, of the Constitution of the State of Florida in that it is not a license tax, and it is not an ad valorem tax.

(K) Said Act violates Sec. 2, of Art. 9, of the Constitu-
[fol. 5] tion of the State of Florida in that the purpose of the levy of the said tax is not a current expense of the State.

(L) Said Act violates Sec. 3 of Art. 9 of the Constitution of the State of Florida, because the levy of such tax is not in pursuance of law.

(M) Said act violates Sec. 4 of Art. 9, of the Constitution of the State of Florida because the appropriations attempted to be made is illegal, null and void.

(N) Said Act violates Sec. 6, of Art. 9, of the Constitution of the State of Florida because the Legislature cannot levy a State tax, or appropriate State money for the purpose of paying the principal or interest, in whole or in part, of County bonds.

(O) Said Act violates Sec. 5 of Art. 9, of the Constitution of the State of Florida, because the Legislature is prohibited from levying a County tax.

(P) Said Act violates Sec. 16, of Art. 3, of the Constitution of the State of Florida because it contains more than one subject and matter properly connected therewith, and the subject matter of the Act is not briefly expressed in the title.

(Q) Said Act violates Sec. 30, of Art. 3, of the Constitution of the State of Florida, because it makes appropriations and contains provisions upon other subjects.

(R) Said Act violates Sec. 30, of Art. 16, of the Constitution of the State of Florida in that it attempts to regulate not only common carriers, but private carriers.

(S) The Legislature is prohibited by the Constitution from making a private carrier, or a private contract hauler a common carrier.

(T) The Tax attempted to be imposed by said Act is not authorized by the Constitution of the State of Florida.

(U) Said Act is so vague, uncertain indefinite and in the [fol. 6] alternative that it does not constitute a law within the meaning of the Constitution of the State of Florida.

(V) Said Act attempts to levy a toll per mile for the use of any public road in the state, and many of the roads over which petitioner hauls are Federal Aid Roads, and the imposition of such tolls is in violation of the statutes of the United States with reference to Federal Aid Roads.

Your petitioner further prays that your Honor grant unto him the State's most gracious writ of habeas corpus, to be delivered to the said W. B. Cahoon, Sheriff of Duval County, Florida, and returnable forthwith before your Honor according to the form of statute in such cases made and provided, and then and there show cause why he holds your petitioner unlawfully in custody, and upon what lawful grounds he seeks to deprive your petitioner of his liberty, and your petitioner prays on final hearing hereof that he may be discharged from further custody.

J. E. Mathews, Attorney for Petitioner.

Duly sworn to by E. S. Smith. Jurat omitted in printing.

[fol. 7] STATE OF FLORIDA,
County of Duval:

I, W. B. Cahoon, Sheriff of Duval County, Florida, do hereby acknowledge service of a certain habeas corpus proceeding instituted by E. S. Smith, and hereby waive all other and further service of notice.

——— ———, Sheriff,

[fol. 8] IN JUSTICE OF THE PEACE COURT, 11TH DISTRICT, DUVAL COUNTY, FLORIDA

STATE OF FLORIDA

vs.

E. S. SMITH, Defendant

Preliminary Hearing for Violation of Chapter 13700, General Laws of the State of Florida

TESTIMONY & PROCEEDINGS BEFORE HON. M. B. CRAIG, JUSTICE OF THE PEACE, COMMENCING AT 9:30 O'CLOCK IN THE FORENOON, WEDNESDAY, AUGUST 21ST, 1929

Present: John E. Matthews, Esquire, representing the defendant Smith.

Reporter: V. F. Halter.

The Court: Mr. Smith——

Mr. Matthews: We waive arraignment and plead not guilty.

The Court: This is the case of E. S. Smith, charged with violating the bus and truck law.

[fol. 9] Mr. Matthews: It's all in one law.

And thereupon one L. R. COOPER was produced as a witness on behalf of the State of Florida, —, having been first duly sworn, testified as follows:

Direct examination.

By the Court:

Q. Mr. Cooper, you signed the affidavit in this case, did you?

A. Yes, sir.

Q. That Mr. Smith was operating a truck in violation of the laws of the State of Florida, recently passed, Section 13700?

A. Yes, sir.

Q. Are you familiar with that law, Mr. Cooper?

A. Well, some, yes, sir.

Q. What's your business?

A. I am in the trucking business.

Q. You are in the trucking business?

A. Yes, sir.

Q. Do you know whether or not Mr. Smith is operating a truck in violation of this law?

A. Well, he has never filed his application for franchise here.

Q. In other words, Mr. Cooper, Mr. Smith has not yet complied with this law?

A. No, sir.

Q. With payment to the Comptroller of the State of Florida, the amount assessed for the operation of each of said trucks?

A. No, sir.

Q. You know that to be true?

A. Yes, sir.

The Court: That's all.

Cross-examination.

By Mr. Matthews:

Q. Mr. Cooper, do you know anything about what schedule Mr. Smith runs on?

[fol. 10] A. Well, he leaves on Monday, here; he goes to Melbourne on Monday.

Q. Just tell his whole schedule as you know it.

A. On Tuesdays he goes to—you read it off there, Mr. Matthews. I got it down there.

The Court: Do you know how many trucks he operates?

A. Operates one; two ton and a half truck and two ton and a half trailer.

Q. He couldn't go to Melbourne on Mondays and somewhere else on Tuesdays?

A. Yes, sir.

Q. Do you know whose freight it is, whether it's——

A. It's the A. & P. Company; that's all he hauls.

Q. In other words he doesn't haul just to collect freight from merchants?

A. No.

Q. He has a regular—regular accounts of merchandise that he does exclusive business with?

A. Yes, sir.

Q. He doesn't operate——

Mr. Matthews: I think I can develop that. I will bring that out.

The Court: There's nothing about that schedule that's——

Mr. Matthews: Oh yes, that's very material.

Mr. Matthews: The schedule: from Jacksonville to Melbourne and return on Monday of each week; from Jacksonville to Titusville and return on Wednesdays of each week; from Jacksonville to Fernandina and return every Thursday morning of each week; then every Thursday afternoon he leaves Jacksonville for Vero Beach and from there to Fort Myers—or Fort Pierce, returning from Fort Pierce to Jacksonville on Friday.

[fol. 11] Q. Mr. Cooper, do you know whether or not Mr. Smith has paid the $75.00 required by this law for the truck, and $75.00 for the trailer?

A. No, sir.

Q. He has not?

A. No, sir.

Q. Do you know whether or not he has applied for a certificate of public necessity from the Railroad Commission?

A. No, he hasn't.

Q. Has he obtained any such certificate from the Railroad Commission?

A. No, sir.

Q. Do you know whether or not on Monday of this week he operated his truck and trailer over the public roads in this district, going to Melbourne?

A. Yes, he did.

Q. He does right along out here almost in front of this building?

A. Yes, sir.

The Court: This building is situated at the corner of Bay and Clay Street?

A. Yes, sir.

Mr. Matthews: That's all.

(Witness excused.)

The Court: Mr. Smith, hold up your hand.

(Thereupon the defendant was sworn.)

The Court: Any statement you make in this case will be used against you should you be bound over to the Criminal Court.

Mr. Matthews: Yes, sir.

The Court: You realize that, Mr. Smith?

A. Sir.

The Court: Any statement you make in this case will be used against you should you be bound over to the Criminal Court.

A. Yes, sir.

Mr. Matthews:

Q. Mr. Smith, are you the defendant in this case?

A. Yes, sir.

[fol. 12] Q. Mr. Smith, do you operate a truck and trailer?

A. Yes, sir.

Q. Going from—on the public roads of Florida?

A. Yes, sir.

Q. Please state what schedule you have, if you have a schedule?

A. I leave here on Monday and go to Melbourne; return Tuesday. Wednesday, Titusville and return Wednesday evening. Thursday morning to Fernandina and back. Thursday evening to Vero Beach and Fort Pierce and return Friday.

Q. You make that regular run between those fixed and different points every week?

A. Yes, every week.

Q. What is the capacity of your truck?

A. Two and a half.

Q. What kind of truck is it?

A. Mack.

Q. What's the capacity of the trailer?

A. Two and a half.

The Court: Tons?

A. Yes, sir.

Mr. Matthews:

Q. Who do you haul for?

A. A. & P. Tea Company.

Q. Do you haul for anybody else?

A. No, sir.

Q. Have you got a definite contract with the A. & P. Tea Company?

A. I have.

Q. To haul for them and no one else?

A. Yes, sir.

Q. Did you ever hold yourself out to the public as being a public hauler or hauling for anybody?

A. Did not.

Q. Please state what is your contract with the Atlantic & Pacific Tea Company, that is, the rates per hundred pounds of merchandise from the various points?

A. Well, it runs from here to Melbourne, 55¢ per hundred pounds.

Q. Per hundred pounds?

A. Flat, yes. 50¢ from here to Titusville; 55¢ from here [fol. 13] to Vero Beach; 60¢ to Fort Pierce; 30¢ to Fernandina.

Q. What does a set of tires on the truck cost you?

A. Do you mean just the truck alone?

Q. I will get the truck first and the trailer next. I want to get it separate so the Court can figure up what the total cost of this operation is.

A. Why, about five hundred dollars.

The Court: You mean for four tires?

A. Yes, sir.

Mr. Matthews:

Q. See, he has double tires on the rear.

The Court: Practically a hundred dollars a tire?

A. No, sir.

The Court:

Q. Eighty dollars?

A. Yes, sir, somewhere about eight- or eighty two dollars.

Mr. Matthews:

Q. What do the tires on the trailer cost you?

A. Same thing.

Q. You only have four on the trailer?

A. Yes, sir.

Q. What is the life of a set of those tires?

A. About six months.

Q. What is the mileage from here to—from the warehouse where you load, to Fernandina?

A. Thirty five miles.

Q. What is the mileage from the warehouse where you load to Titusville?

A. Hundred and forty four and a half miles.

Q. What is the mileage from the warehouse where you load to Melbourne?

A. One hundred and eight- six.

Q. What is the mileage from the warehouse where you load to Vero Beach?

A. Two hundred and nineteen.

Q. Vero Beach to Fort Pierce?

A. Two hundred and thirty three.

The Court: Not Vero Beach to—You mean from here to Fort Pierce?

[fol. 14] Mr. Matthews: No, he goes from Vero Beach to Fort Pierce. That's fourteen miles?

A. Yes, sir.

Q. The total distance from here to Fort Pierce is two hundred and thirty three miles.

A. That's what I said.

Q. The- you would make twelve hundred miles per week?

A. Yes, sir.

Q. Going and coming?

A. Yes, sir.

Q. What mileage *to* you get out of gasoline for those trucks?

A. Why on an average of about eight miles.

Q. What does gasoline cost you per gallon?

A. Twenty two cents.

Q. Included in that is six cents a gallon tax?

A. Yes, sir.

Q. That would make the gasoline itself sixteen cents a gallon for the truck?

A. Yes, sir.

Q. Now, what is the cost of that truck? Just the truck alone?

A. With the body and all?

Q. Yes, the complete truck?

A. Forty eight hundred and fifty dollars.

Q. What is the cost of the trailer?

A. Eleven hundred and thirty five dollars.

Q. What is the life of that equipment? In other words if you make even a thousand miles a week, that would be fifty two thousand miles a year, one hundred and fifty six thousand miles in three years. What is the life of your equipment, the truck and trailer?

A. Why, I should say about three years.

Q. Do you pay a license tag for a tag on that truck?

A. Yes, sir.

Q. What is that?

A. One hundred and eight- six dollars and fifty cents.

Q. Have you got the tag for your truck?

A. Yes, sir.

Q. Do you pay a license—for a license tag on your trailer?

A. Yes, sir.

Q. How much does that cost?

A. One hundred and forty two dollars and fifty cents.

[fol. 15] Q. When did you buy this equipment?

A. February 15th.

Q. Then, of course, you will have to pay an ad valorem tax in January on this same equipment? That is property tax on it too?

A. Yes, sir.

Q. What kind of insurance, liability insurance and so forth do you carry and what does it cost you?

A. Why, I carry cargo insurance; it costs one hundred dollars.

Q. A year?

A. Yes, sir.

Q. Any liability insurance for accidents and things like that?

A. Yes, sir.

Q. What does that cost you?

A. Why, that's all included in the same clause.

The Court: That hundred dollars?

A. Yes, sir.

The Court: Must be more than that.

Mr. Matthews: You say it's a combined policy. Do you carry fire, theft and collision insurance?

A. Yes, sir.

Q. What does that cost?

A. Hundred dollars.

Q. In addition to the other hundred?

A. Yes, sir.

Q. These tags that you get, one costing one hundred and eighty six dollars and fifty cents, and the other one costing one hundred and forty two dollars and fifty cents per annum, are they for hire tags?

A. Yes, sir.

The Court: That for hire tag in that case, that gives you the right to do business with anyone any time?

A. Yes, sir.

Q. But in your special business your contract is exclusively with the A. & P. Company?

A. When I made the application for a license, I told them I was going to haul exclusively for one concern; they told me I would have to have a for hire license to do that.

Mr. Matthews: That's the law; you have got to have a fore hire license if you are hauling for a concern under a contract.

[fol. 16] Mr. Matthews:

Q. Do you have to have a helper with you?

A. Yes, sir.

Q. What do you have to pay him a week?

A. Eighteen dollars a week.

The Court: Expenses too?

A. Yes, I pay some of the expenses too.

Q. Eating?

A. Yes, sir.

Mr. Matthews:

Q. What does that helper cost you per week counting his expenses and the pay?

A. It costs about twenty to twenty two dollars a week.

Q. You are positive you do not hold yourself out as hauling for any and everybody?

A. No, sir.

Q. You do not haul for anybody except the A. & P.?

A. No, sir.

The Court: Haven't, this year?

A. No, sir. I have had offers to haul rosin from Saint Augustine, some for sixty five cents a barrel and from New Smyrna and I wouldn't put my hand on it.

Mr. Matthews:

Q. So all the revenue you received this year came directly from the A. & P. Tea Company?

A. Yes, sir.

Q. What is the amount of oil you use per week in this truck? Lubricating oil?

A. Fourteen quarts.

Q. What does it cost you?

A. Cost fifty six cents per gallon.

Q. What are your expenses for upkeep and repairs? Do you ever have any expenses for repairs and upkeep of equipment?

A. Why, yes. It will run about fifteen or twenty dollars a week.

Q. Now, Mr. Smith, in view of the fact that under this law you would be taxed a mileage tax of two cents per mile on your equipment, and you travelled twelve hundred miles a week, making a total tax of twenty four dollars per week [fol. 17] for the mileage tax, or practically one hundred dollars a month, or twelve hundred -ollars a year, to you believe you can stay in business under your present contract with the A. & P. Tea Company and pay that tax?

A. No, sir.

Mr. Matthews: That's all.

(Witness excused.)

The Court: Any other witnesses?

Mr. Matthews: Yes. I want to ask Mr. Cooper one other question.

Thereupon the witness L. R. Cooper was recalled to the witness stand for further cross-examination and testified as follows:

Further cross-examination.

By Mr. Matthews:

Q. Mr. Cooper, in your hauling, you have complied with the law, haven't you?

A. Yes, sir.

Q. In other words you paid your seventy five dollars and made your application?

A. Yes, got my receipt for it.

Q. So, if you are going to have to do it, you think everybody else ought to do it?

A. Absolutely.

The Court:

Q. You heard the testimony of Mr. Smith, regarding the consumption of gas and expenses attached to his hauling. Do you think that expense is fair or reasonable or too much or too little?

A. I think it's too much.

Q. The expense?

A. Oh, no, sir.

Q. You think the expenses he has enumerated——

A. I think he has hardly enough.

Q. You think it should be more than that?

A. Yes; I figure it costs me more than that to operate.

Mr. Matthews:

Q. How many miles a week to you make with your [fol. 18] truck?

A. Well, we average—taking year in and year out we average eight hundred a week.

The Court: What size truck do you operate?

A. Two and a half ton.

Q. Trailer too?

A. Yes, same kind.

Q. Mr. Cooper, you bought for hire tags the same as Mr. Smith bought?

A. Yes, sir.

Q. And besides that you had to pay this $75.00 quarterly tax?

A. Yes, sir.

Q. That's required by this last act of the Legislature?

A. Yes, sir.
Q. That's $75.00 a quarter?
A. Yes, sir.

Mr. Matthews:

Q. How much gasoline do you get—I mean, how much mileage do you get out of your truck?
A. I figure around—I don't get but seven miles.
Q. How much oil does it take for you a week—Lubricating Oil?
A. We change oil every week. Takes fifteen quarts.
Q. At fifty six cents a quart?
A. No, sir.
Q. How much per gallon?
A. Ninety cents per gallon.
Q. You pay ninety cents per gallon for yours?
A. Yes, sir.
Q. You heard Mr. Smith's testimony about his expenses and you doubt whether or not that will cover his expenses? What expense is it you have in mind that would be greater than what Mr. Smith testified?
A. I figure Mr. Smith—he says he operates his truck on about fifteen dollars a week. I figure it would take at least forty dollars.
Q. An average of forty dollars a week?
A, Yes. That is figuring in tires and tubes. Year in and year out it will run right around that. Won't miss it [fol. 19] but very little.
Q. You think that you can stay in business right on and pay this mileage tax?
A. Why no, sir, I sure don't.
Q. You know this $75.00 you paid is only just a deposit. At the end of the quarter you will have to pay mileage tax in addition to that?
A. Yes, sir.

Mr. Matthews: That's all.

(Witness excused.)

And thereupon one B. C. NAUGLE was produced as a witness on behalf of the defendant, —, being first duly sworn, testified as follows:

Cross-examination.

By Mr. Matthews:

Q. Mr. Naugle, what is your business or occupation?
A. Trucking.
Q. How long have you been in that business?
A. About ten years.
Q. Do you think that you are familiar enough with the trucking business in Florida to testify as to the average carrying capacity of trucks and the average mileage trucks make and the average charge per hundred pounds for freight and so forth?
A. I do.
Q. How many trucks do you operate?
A. Four.
Q. You operate some of yours as common carriers for the public and some of them you operate under private contract do you not?
A. About nine-tenths under private contract.
Q. What is the average carrying capacity of trucks operating in Florida?
A. Two and a half tons.

The Court: You mean the average truck?

Mr. Matthews:

Q. The average carrying capacity per truck?
[fol. 20] A. Fractory rating is what you have reference to?
Q. Most of the trucks operate, based in connection with that?
A. Yes, sir.
Q. What's the average carrying capacity of trailers?
A. Factory rating capacity, two tons; some two and a half ton.
Q. What is the average life of such equipment?
A. Three years; under good condition, might reach four.
Q. What is the average cost of a truck such as you are testifying about?

A. From forty five hundred to five thousand dollars.

Q. What is the average cost of the trailer?

A. From eight to eleven hundred dollars.

Q. What is the average cost of tires on the trucks?

A. Set of tires on the truck? *A.* A Set of tires; that includes a spare, naturally.

Q. Yes.

A. That would be about five hundred and fifty dollars.

Q. What's the average cost of a set of tires on the trailer?

A. Three hundred and twenty five dollars.

Q. What is the average life of these tires?

A. About fifteen thousand miles.

Q. What is the average gas consumption of those trucks, per gallon of gasoline?

A. About seven miles per gallon.

Q. And figuring on a mileage basis, what is the lubricating oil consumption?

A. About one quart per hundred miles.

Q. In other words every time you have gone fifteen hundred miles you have got to change oil?

A. Yes, sir.

Q. What is, if you know, the average cost of mainte- [fol. 21] nance and repairs of such trucks? I don't mean tires now. Mechanical parts and so forth. Keeping your truck in good condition.

A. About four hundred dollars a year.

Q. Such trucks, of course, have to pay the six cents gasoline tax?

A. Yes, sir.

Q. They have to pay for the license tag for operating and the for hire tax?

A. They do.

Q. In your judgment and your opinion, do you believe it is possible for the average truckman to continue operation and pay this mileage tax?

A. It's impossible.

Q. What do you figure the average truck does a week; the number of miles per week?

A. About eight hundred.

Q. You understand that this law exempts from operation of it, all trucks engaged in the transportation of agricultural, horticultural, dairy or other farm products, fresh and salt water fish and oysters and shrimp?

A. I do.

Q. What is the difference in the damage that would be done to a road under a two and a half ton truck loaded with some of these products and one of your trucks loaded with merchandise?

A. Would be no difference.

Q. What is the—relatively speaking—the difference in the weight between a bus with a capacity of ten passengers and a truck of two and half tons capacity?

A. I believe they would be about the same.

Q. About the same?

A. About the same.

Q. Now, suppose you got to a bus with twenty passengers capacity?

A. It would be heavier than the truck.

Q. Do you know, relatively, how much heavier?

A. About four—three or four thousand pounds heavier than the truck.

Q. Then it would do the road more damage than the truck?

[fol. 22] A. Far more, relative to the additional weight and speed.

Q. Do you understand this law permits a bus carrying passengers to go forty five miles an hour?

A. Yes, sir.

Q. But holds the truckman down to the old law?

A. Yes, sir.

The Court: What is the speed for the old law?

A. Speed for the old law, I believe, is thirty miles; busses forty five.

Mr. Matthews:

Q. Under the old law the trucks and buses were under the same speed regulation?

A. Yes, sir.

Mr. Matthews: I think that's all.

(Witness excused.)

And thereupon one E. R. Brissette was produced as a witness on behalf of the defendant, —, having been first duly sworn, testified as follows:

Direct Examination.

By Mr. Matthews:

Q. Mr. Brissette, what is your business or occupation?

A. My title is Florida Manager for Mack International Motor Truck Corporation, manufacturers of Mack Trucks and Mack products.

Q. Do you know anything about trucks?

A. Yes, sir.

Q. How long have you been in that business?

A. Since 1913.

Q. Do you know of the average carrying capacity, factory rated, of trucks operating in Florida for hire?

A. Those I have sold—yes, I know.

Q. I will ask you this. Are there a good many Mack trucks in Florida?

A. Yes, sir.

Q. About how many, would you guess?

A. I couldn't make an estimate of that for the reason [fol. 23] I could tell how many have been sold, but a number have been transferred out of the State in whole fleets; the Standard Oil transferred about fifty; the Texas Company about forty. See, we sold a great deal in 1924, 1925 and 1926 that are not here today. However, I would say it runs into the hundreds.

Q. What is the average cost of those Mack trucks, complete ready for business, fully equipped.

A. You have reference to the two and a half ton truck?

Q. Yes.

A. Ranging, depending upon the truck size, whether it has a cab and a windshield on or not, and different type of body electric light or oil equipment, ranging from forty five to fifty one hundred.

Q. The average carrying capacity, according to factory rating, would be two and a half tons on most of these trucks?

A. The factory rating would be two and a half tons on most of these trucks, yes, sir.

Q. What is the average life of those trucks, per mile? Let's get it per mile first. That is, the mileage life of the truck?

A. With good care and changing the oil as per factory specifications, which on this basis is approximately weekly, run about three years. Of course—pardon——

Q. Go ahead.

A. Of course in those three years the operator of a vehicle is required to maintain that vehicle. If he does not maintain it, little things will creep into it such as loose bearings or something of that character that would cause serious damage and run the costs up in the hundreds of dollars; say five or six hundred dollars as the case may be for the bus or truck.

[fol. 24] Q. What is the usual gasoline consumption in those trucks?

A. Well, I would say we would strike an average of approximately seven miles due to the fact the people carry full trailers and there are these things to take into consideration. For example a man will be unloading in Daytona or in the busy streets here. At times drivers leave the motors running as—although he has a man up in the cab which is in compliance with the law. The man who owns his truck and is all alone, he will usually shut off his motor. That's the reason it is hard to strike an average, but approximately seven miles per gallon.

Q. What is the usual oil consumption?

Q. Well, when a truck is new, our experience has been you do not have to add any oil to it. Then you make a change of approximately once a week, which is about fourteen of fifteen quarts.

Q. Well, you wouldn't make a change until you had driven the trucks a certain number of miles?

A. No, sir.

Q. You figure on driving a truck how many miles per week?

A. About a thousand; even as high as twelve hundred.

Q. Do you know anything about the costs of a set of tires on a Mack truck?

—. The cost for tires and tubes, figuring on the average that is used by the average hauler in an- out of Jacksonville will run approximately five hundred and fifty dollars. That's replacement tires.

Q. What is the average life of such tires, based on mileage?

A. From our experience in Florida, which dates back to 1920, we figure it will run about fifteen thousand miles.

Q. For a set of tires?

A. Yes, sir.

[fol. 25] Q. Leaving off the tire expense, what do you figure the average cost of maintenance of a truck is the first, second and third years of it's life?

A. I would figure, including painting, lettering, minor repairs, inspection, which is also included in maintenance; you have to take a wheel off now and then to see that the bearings are tight; to — into the motor at times; go into the transmission; I would say for a life of a hundred and fifty thousand miles it would run right around twelve or thirteen hundred dollars.

Q. To maintain it and keep it in repair?

A. Yes, sir.

Q. What you have testified to is generally applicable to the other makes of trucks operating in Florida.

A. Approximately.

Q. Knowing what you do of the trucking business and the charges they make on regular runs and so forth, and figuring that this law imposes an additional tax in addition to all other taxes of one cent per mile on a truck and one cent per mile on a trailer, when the carrying capacity is fifty five thousand pounds—fifty five hundred pounds, which would make a total tax on the trailer and truck of two cents a mile, and a truck making an average of one thousand miles a week, that would make an average tax of twenty dollars a week or a thousand and forty dollars per year in addition to all the other taxes that they have been paying. What effect will that have upon the trucking business?

A. Considerable. It will practically eliminate the sales to this extent. The manufacturers will not be willing to sell these vehicles with a low down payment and the balance on deferred payments.

The Court: A man who operates those trucks, the amount [fol. 26] of twelve hundred dollars would considerable cut down that income wouldn't it?

A. Yes, it would; in my opinion it would prevent us from extending credit to the operators.

Mr. Matthews:

Q. That's because, in your opinion, the truck man couldn't make any money operating?

A. Yes. He couldn't buy trucks if we found he couldn't make the payments. Under this question I don't feel he could make money.

Mr. Matthews. That's all.

(Witness excused.)

And thereupon one G. J. CURREN was produced as a witness on behalf of the defendant, —, having been first duly sworn, testified as follows:

Direct examination.

By Mr. Matthews:

Q. Mr. Curren, what is your business?
A. Truck operator.
Q. How many trucks do you operate?
A. Just one.
Q. And a trailer?
A. Yes, sir.
Q. What kind of truck is it?
A. Indiana.
Q. What's its rated carrying capacity?
A. Two and a half ton.
Q. What's the carrying capacity of your——
A. Two tons.
Q. —trailer?
A. Two tons.
Q. What is the cost of your truck, when it was new, complete, ready for business?
A. Forty two hundred dollars.
Q. What was the cost of your trailer?
A. Nine hundred dollars.
Q. About how many miles per week do you make?
A. Ten hundred and ten.
Q. Do you run over a regular route?
A. Yes, sir.
Q. What is the average life of that truck?

[fol. 27] A. Three years.

Q. How much?

A. Three years.

Q. What's the cost of a set of tires for your truck?

A. Well, approximately about five hundred dollars.

Q. What about the tires for the trailers?

A. I imagine they would run around three hundred and fifty dollars.

Q. How many miles do you get out of a set of tires?

A. We figure around fifteen thousand miles, average.

Q. How much gasoline—what is the gasoline consumption of your truck?

A. Just about seven miles per gallon.

Q. How many miles—how much oil does your truck hold?

A. Nine quarts.

Q. Nine quarts?

A. Yes, sir.

Q. How often do you have to change it?

A. Once a week.

Q. That's figured, every thousand miles you have to change it?

A. Yes, sir.

Q. What do you pay for oil?

A. Thirty five cents a quart.

The Court: You buy it by the quart or gallon?

A. By the gallon, it averages thirty five cents a quart.

Q. What is the license tag for your truck?

A. For hire.

Q. What does it cost you?

A. Costs a hundred and eight some odd dollars.

Q. You have the same kind of tag for your trailer?

A. Yes, sir.

Q. What does that cost?

A. Cost me a hundred and seventeen dollars.

Q. In addition to the tire proposition, leaving that out, what does it cost you on an average to maintain your truck and trailer and keep it in repair?

A. I figure the greasing and cleaning and all runs somewhere around about fifteen or seventeen dollars a week.

[fol. 28] Q. Do you have to have a helper with you on your truck?

A. Yes, sir.

Q. What do you pay him?

A. Fifteen dollars a week.

Q. Do you have to pay any of his expenses?

A. No, sir.

Q. What do you get per hundred pounds for hauling this freight?

A. Well, according to what point I haul it to.

Q. Just designate the points you haul to and the actual rate. Different points.

A. Well, I haul to Cocoa, fifty five cents per hundred.

Q. How many miles from here to Cocoa?

A. A hundred and sixty one. I haul to Stuart, 65¢ per hundred.

Q. How far is it to Stuart?

A. Two hundred and forty nine miles.

Q. Two hundred and forty nine miles?

A. Yes, sir; Green Cove Springs, 25¢ per hundred; Crescent City, 35¢ per hundred.

Q. Give the mileage to Green Cove Springs?

A. Twenty six to Green Cove Springs; eight- four to Crescent City.

Q. You make a trip to these places once a week?

A. Yes, sir.

Q. Each one of them?

A. Yes, sir.

Q. I will ask you, knowing the truck business—how long have you been in the truck business?

A. Operating myself about six months.

Q. How long had you been operating one before you went out for yourself?

A. Close on to three years.

Q. Knowing what it cost you to operate a truck and all the other taxes you have to pay, and the gross income you get from it, do you think you will be able to continue to operate if you have to pay this tax of one cent per mile on your [fol. 29] truck and one cent per mile on the trailer?

A. I know I can't.

The Court: Mr. Curren, do you always go out with a capacity load?

A. No, sir, not all the time.

Q. It cost- just about the same to operate a half a load as it does a full load?

A. Yes, sir, approximately the same; very little difference.

Q. You are paid by the hundred weight?

A. Yes, sir.

Q. If you only had half a load, you would be the loser?

A. Yes, sir.

The Court: That's all.

Mr. Matthews: That's all.

(Witness excused.)

Mr. Matthews (addressing Mr. Smith): Mr. Smith, in going out with your hauling, do you always go with a capacity load?

A. No.

Q. Full load?

A. No, sir.

Q. Suppose you only had half a load?

A. I would have to go just the same.

Q. In other words you have to go for the A. & P. Company whether you got a sack of flour or whether you got five tons of stuff?

A. Yes, sir.

Q. Got to go?

A. Yes, sir, got to go or get out one.

Mr. Matthews: That's all.

MOTION TO DISMISS

Mr. Matthews: We now move the Court to dismiss this defendant upon the following grounds:

1. The evidence fails to show any violation of any valid law of the State of Florida.

2. That Chapter 13700, Laws of Florida, 1929, under which this prosecution is brought, is invalid, null, void and unconstitutional.

A. Because said legislation denies the defendant his [fol. 30] rights of acquiring, possessing and protecting his

property, guaranteed to him by Section One of the Declaration of Rights of the Constitution of the State of Florida.

B. Because the said Act undertakes to deprive the defendant of his property without due process of law, in violation of Section Twelve of the Declaration of Rights of the Constitution of the State of Florida and the Fourteenth Amendment of the Constitution of the United States.

C. Because the legislation is arbitrary, unreasonable and constitutes an unreasonable classification in violation of the Constitution of the State of Florida and of the United States.

D. Because said act denies to the defendant, the equal protection of the laws as guaranteed to him by Section One of the Declaration of Rights of the Constitution of the State of Florida and the Fourteenth Amendment of the Constitution of the United States.

E. Said Act would deprive the defendant of his liberty without due process of law, guaranteed to him by the Constitution of the State of Florida and the United States.

F. Because said tax attempted to be imposed upon the defendant, and all who are similarly situated, is arbitrary, unreasonable, discriminatory and amounts to confiscation.

G. Said Act does not apply to all who are similarly situated alike.

H. Said Act impairs the obligation of a contract between the State of Florida and also between the defendant and those with whom he has contracted to do hauling, in violation of Section Seventeen of the Declaration of Rights of the Constitution of the State of Florida and Section Ten of Article One of the Constitution of the United States.

[fol. 31] I. Said Act violates Sections Twenty and Twenty One of Article Three of the Constitution of the State of Florida in that it imposes a tax for the specific purpose of revenue and not for regulation and should therefore apply to all trucks trailers and busses alike, or should be based on some reasonable classification.

J. Said Act violates Sections One and Five of Article Nine of the Constitution of Florida in that it attempts to im-

pose a tax which is not a license tax and is not an ad valorem tax, but a mileage tax.

K. The Said Act violates Section two of Article Nine of the Constitution of Florida in that the levy of the said tax is not for a current expense of the State.

L. Said Act violates Section Three of Article Nine of the Constitution of Florida because the levy of such tax is not in pursuance of law.

M. Said Act violates Section Four of Article Nine of the Constitution because the appropriation attempted to be made is not in pursuance of law and is illegal, null and void.

N. Said Act violates Section Six of Article Nine of the Constitution of the State of Florida because the legislature cannot levy a tax or appropriate State money for the use of paying the principal or interest in whole or in part of County bonds, as said act attempts to do.

O. Said Act violates Section Five, Article Nine, of the Constitution of Florida, because said Section prohibits the legislature from levying a County tax.

P. Said Act violates Section Sixteen, Article Three of the Constitution of the State because it contains more than one subject, and matter properly connected therewith, and the subject matter of the act is not briefly expressed in the title.

[fol. 32] Q. Said Act violates Section Thirty of Article Three of the State Constitution because it makes appropriations and contains provisions on other subjects which is prohibited by said Section.

R. Said Act Violates Section Thirty of Article Sixteen of the State Constitution in that it attempts to regulate, not only common carriers, but all persons who may be engaged in the business of transporting property for compensation which is prohibited by said Section.

S. The legislature is prohibited by the Constitution from making a private carrier or a private contract hauler a common carrier.

T. The tax attempted to be imposed is not authorized by the Constitution of the State of Florida.

U. S[illegible]d Act is *so* vague, uncertain, indefinite and in the alternative in that it does not constitute a law within the meaning of the Constitution of the State of Florida.

V. Said act attempts to levy a toll per mile for the use of public roads for the purpose of transporting freight for compensation and many of the roads over which the defendant hauls are Federal Aid Roads and the imposition of such tolls is in violation of the Statutes of the United States with reference to Federal Aid Roads.

Mr. Matthews: I realize it's not proper for this Court to declare a law unconstitutional. I simply put it in the record at this time to preserve the record.

The Court: The Legislature of 1929 passed the Act on which this warrant is drawn and this Court has no right to declare such act unconstitutional, and this Court only has probable cause for its jurisdiction, therefore I will hold [fol. 33] Mr. Smith for Criminal Court under a five hundred dollar bond.

Thereupon the hearing adjourned.

[File endorsement omitted.]

IN CIRCUIT COURT OF DUVAL COUNTY

WRIT OF HABEAS CORPUS AND RETURN—Filed Sept. 5, 1929

STATE OF FLORIDA,
County of Duval:

To W. B. Cahoon, Sheriff of Duval County, Florida:

You are hereby commanded to have the body of E. S. Smith, by you imprisoned and detained, as it is said, together with the time and cause of such imprisonment and detention before the Circuit Court of the Fourth Judicial Circuit in and for Duval County, Florida, at 3 P. M. o'clock on the 26 day of August, A. D. 1929, after being served with this writ to be dealt with according *ot* law, and have you then and there this writ together with your return thereon of your doings in the premises.

Witness my hand this the 21st day of August, 1929.

DeWitt T. Gray, Judge.

[fol. 34] (Endorsed)

Received this writ on the 21st day of August, A. D. 1929, and executed the same on the 26th day of August, A. D. 1929, having the body of the within named E. S. Smith now before the Court, as herein commanded, said E. S. Smith being held by the undersigned under and by virtue of a warrant issued out of the Eleventh Justice of the Peace Court of Duval County, Florida, charging him with the offense of violation of Chapter 13700, Laws of Florida, 1929, and by reason of a committment by the Justice of the Peace of the said Court, said Justice having found probable cause and having committed the said E. S. Smith for trial in the Criminal Court of Record in and for Duval County, Florida. Said committment is exhibited herewith.

W. B. Cahoon, Sheriff Duval County, by Frank A. Edwards, Deputy Sheriff.

[File endorsement omitted.]

[fol. 35] IN JUSTICE OF PEACE COURT

THE STATE OF FLORIDA

vs.

E. S. SMITH

COMMITMENT—Filed in Circuit Court Sept. 5, 1929

In the name of the State of Florida, to the Sheriff or any Constable of said County:

Whereas L. R. Cooper has this day made oath before me, in writing, that one E. S. Smith on the 19th day of Aug., 1929, in the County and District aforesaid, E. S. Smith was owning and operating, or controlling, or managing two motor propelled vehicles, not usually operated on or over rails, but operated upon the public highways of the State of Florida, in said District and County, said vehicles being a truck of two and one-half tons capacity, and a trailer of two and one half tons capacity, and he used said motor vehicles in the business of transporting property for compensation

over public highways in the State and between fixed termini and over regular routes, such routes being from Jacksonville to Melbourne and return on Monday, from Jacksonville to Titusville and return on Wednesday, from Jacksonville to Fernandina and return on Thursday morning, from Jacksonville to Vero Beach and from there to Ft. Pierce, leaving Jacksonville every Thursday afternoon, and returning to Jacksonville, on Friday. Said trips are made each week. The said Smith has not made any application for certificate of public convenience and necessity, and he has not received from the Railroad Commission of the State of Florida, a certificate that the present or future public convenience and necessity requires, and will require, such operation. The said Smith has not paid to the Comptroller $150.00 as an advance payment upon mileage tax required [fol. 36] and levied for the operation of said vehicles, all of which is a violation of Chapter 13700, Laws of The State of Florida, 1929, and *and* whereas it appeared to me from an examination that there was just reason to believe that the said defendant was guilty of such offense, and the said defendant, on being brought before me on a warrant, was required to enter a recognizance, with sufficient security, in the sum of Five Hundred dollars, to appear at the next term of the Criminal Court to be held in and for said County, and not to depart same without leave, and the said defendant having refused to find such security:

You are hereby commanded forthwith to convey the said defendant to the common jail of said County, and to deliver him to the keeper thereof, who is hereby required to receive the said defendant into his custody in the said jail, and to keep him safely there until he shall find security or be thence discharged by due course of law.

Given under my hand and seal this 21st day of August, A. D. 1929.

M. B. Craig, Justice of the Peace, Eleventh District.
(Seal.)

[File endorsement omitted.]

[fol. 37] [File endorsement omitted]

IN CIRCUIT COURT OF DUVAL COUNTY

10475-L

E. S. SMITH

vs.

W. B. CAHOON, as Sheriff

Habeas Corpus

JUDGMENT—Filed Sept. 5, 1929

This cause coming on to be heard upon the petition of E. S. Smith, for Writ of Habeas Corpus, and his petition for discharge, and upon the return of the Sheriff as to the said Writ that he is holding the said Petitioner in custody by reason of a warrant issued out of the Justice of the Peace Court of the Eleventh Justice of the Peace District in and for Duval County, Florida, and the committment from said Court committing the prisoner to the trial before the Criminal Court of Record in and for Duval County, Florida, upon a charge of violating the provisions of Chapter 13700, Laws of Florida, 1929.

The prisoner is charged specifically with having operated a truck and trailer over the public highways in said District in Duval County, Florida, for compensation, and without having made application for a certificate of public necessity and convenience, and without having received any such certificate, and without having paid the advance deposit on account of the tax imposed in and by said Act.

The hearing was had before the Justice of the Peace, and the testimony taken at such hearing is attached to the Peti- [fol. 38] tion, and made a part thereof. There is no dispute as to the facts in this case. It appears that the Petitioner operates a truck and trailer under private contract with one concern to do all of its hauling between certain designated fixed termini. He makes these trips regularly each week. He is required to go for the firm (Min. 39, page 378) with which he has contracted, whether this firm has a full load of merchandise or not. He does not hold himself

out to the public as a common carrier, does not now haul for the public generally, and never has hauled for the public generally. The testimony shows that on numerous occasions he had actually refused to haul freight for others, even though he was returning to Jacksonville empty. These facts show the Petitioner to be a private carrier, and not a common carrier.

Petitioner attacks the constitutionality of the law on many grounds, among them being that the act violates the provisions of Sections 1 and 12 of the Declaration of Rights of the Constitution of the State of Florida, and the Fourteenth Amendment to the Constitution of the United States in that the Act would deprive Petitioner of he right of acquiring, possessing and protecting his property, and would deprive Petitioner of his property without due process of law. It is the contention of the Petitioner that it is beyond the power of the Legislature to convert or transmute him into a common carrier by legislative fiat, or to require a private carrier to assume the duties, burdens and obligations, and become subject to the same rules and regulations as a Common carrier.

In the case of Michigan Public Utilities Co. vs, Duke, 36 A. L. R. 1105, decided by the Supreme Court of the United [fol. 39] States, it was held that it was beyond the power of the Legislature, by legislative fiat or legislative command, to make a private carrier become a common carrier, and that such legislation violated the due process clause of the Fourteenth Amendment of the Constitution of the United States. In this case, the Legislature of Michigan attempted, in so many words, to define all transportation companies transporting persons or property for hire by motor vehicles as being common carriers. This the Supreme Court of the United States said could not be done.

Min. 39, page 379:

In a later case, from California, Frost and F. Trucking Co. vs. Railroad Commission, 240 Pacific, page 26, the Act, as amended in 1919 was very similar to the Act now before the Court. The Legislature attempted to place all carriers for compensation under the jurisdiction of the Railroad Commission, and in the same Act, gave the Railroad Com-

mission practically the identical powers that the Act now before the Court gives to the Railroad Commission of Florida. The main difference between the Michigan law and the California law is that the Michigan law attempts to define all carriers as common carriers, whereas the California law attempts to subject all carriers for compensation to the same duties, liabilities, rules, regulations and burdens as common carriers. The Supreme Court of California sustained the validity of the Act, and held that it was competent for the Legislature to make a conditional offer to a person or corporation to the effect that if such person or corporation desired to use the public highways for transporting property for hire, such person or corporation should dedicate his property to the quasi public use of transportation, or at least submit himself or itself to [fol. 40] the conditions, regulations and restrictions specified in the Act. These conditions, regulations and restrictions specified in the Act almost identical with those in the Act now before the Court, and are such as are only applicable to common carriers.

An appeal was taken to the Supreme Court of the United States in the Frost case 47 A. L. R., 458-70 L. ed. 1101, and that Court reversed the opinion and decision of the California Court. The Supreme Court of the United States, in reversing this case, said:

"It would be a palpable incongruity to strike down an act of state legislation which, by words of express divestment, seeks to strip the citizen of rights guaranteed by the Federal Constitution, but to uphold an act by which the same result is accomplished under the guise of a surrender of a right in exchange for a valuable privilege which the State (Min. 39, page 380) threatens otherwise to withold. It is not necessary to challenge the proposition that, as a general rule, the state, having power to deny a privilege altogether, may grant it upon such conditions as it sees fit to impose. But the power of the state in that respect is not unlimited; and one of the limitations is that it may not impose conditions which require the relinquishment of constitutional rights. If the state may compel the surrender

of one constitutional right as a condition of its favor, it [fol. 41] may, in like manner, compel a surrender of all. It is inconceivable that guaranties embedded in the Constitution of the United States may thus be manipulated out of existence. * * *"

This decision from the Supreme Court of the United States taken in connection with the Duke case, is the supreme law of the land, and is conclusive upon this question. It is beyond the power of the Legislature by legislative fiat or command, to transmute a private carrier into a common carrier, and it is likewise beyond the power of the Legislature to accomplish this forbidden purpose by making a private carrier for hire submit to all of the rules, regulations and burdens of a common carrier in order to do business. See also Hissem vs. Guran, 146 N. E., 808, and Purple Truck Garage Co. vs. Campbell, 51 A. L. R. 816.

It was urged, however, that notwithstanding the fact that this Act now before the Court gives to the Railroad Commission the power to regulate rates, fares, schedules, routes to be travelled, to grant or refuse a permit to do business, to fix the time of departure and arrivals, and the power to make such other rules and regulations as are applicable only to common carriers, the Railroad Commission has not in fact attempted to exercise all of the power conferred upon it by the Act as it relates to private carriers. However, that is not the test of the constitutionality of a law.

[fol. 42] Min. 39, page 381:

In the case of Purple Truck & Garage Co. vs. Campbell, supra, it was held:

"In ascertaining the judicial value of a statute in litigation in which it is involved, it is necessary to consider nor what actually has been done under it, but what it authorizes and permits to be done."

It is, therefore, the opinion of the Court that Chapter 13,700, Laws of Florida, 1929, violates Sections 1 and 12 of the Declarations of Rights of the Constitution of the State of Florida, and the Fourteenth Amendment of the

Constitution of the United States, in so far as the same relates to private carriers for compensation.

Having reached this conclusion, the next question is whether or not this holding makes the entire law unconstitutional. In Section 18 of the Act, it is provided:

"Section 18. If any section, sub-section, sentence, clause or phrase of this law is for any reason held unconstitutional, such decision shall not affect the validity of the remaining portions of this law. * * *"

It therefore appears that this opinion of the Court does not affect the validity of the Act as it relates to common carriers.

A number of other constitutional objections were raised by the Petitioner, but the Court having reached the conclusion above set forth, it is unnecessary to decide the other questions presented.

It is therefore considered, ordered and adjudged that the Petitioner, E. S. Smith, be and he is hereby discharged from custody, and

It is further ordered that the cost of this proceeding be [fol. 43] taxed against Duval County.

Done and ordered in chambers this the 5th day of September, A. D. 1929.

DeWitt T. Gray, Judge.

[File endorsement omitted.]

IN CIRCUIT COURT OF DUVAL COUNTY

EX PARTE E. S. SMITH

PETITION OF THE ATTORNEY GENERAL FOR ALLOWANCE OF WRIT OF ERROR—Filed Sept. 9, 1929

To the Honorable De Witt T. Gray, Judge of the above Court:

Now comes the State of Florida, by Fred H. Davis, its Attorney General, and shows unto your Honor that the said State of Florida is aggrieved by the judgment heretofore entered in this proceeding on the 5th day of Sep-

tember, 1929 wherein and whereby it was ordered and adjudged that the petitioner, E. S. Smith, be discharged from [fol. 44] the custody of the respondent, W. B. Cahoon, as Sheriff of Duval County, Florida, under the cause of detention specified in the said sheriff's return to the writ of habeas corpus issued in this cause, and in accordance with Section 3580, Revised General Statutes of Florida (Section 5444, Compiled General Laws, 1927) prays that Your Honor, the Judge hearing said cause, shall grant to The State of Florida in the name of the respondent, W. B. Cahoon, as Sheriff of Duval County, Florida, a writ of error to the said judgment of this court entered September 5th, 1929, and that said writ of error be made returnable before the Supreme Court of the State of Florida on Monday, October 14th, 1929, pursuant to law and the course of procedure in such cases made and provided.

Filed this September 9th, 1929.

Fred H. Davis, Attorney General of the State of Florida.

IN THE SUPREME COURT OF THE STATE OF FLORIDA

W. B. CAHOON, as Sheriff of Duval County, Florida, Plaintiff in Error,

vs.

E. S. SMITH, Defendant in Error

Writ of Error in Habeas Corpus Case.—Writ of Error to Judgment of Court Discharging Petitioner in Habeas Corpus Case

Copy of Proposed Assignment of Errors

[fol. 45] Now comes the plaintiff in error, W. B. Cahoon, as Sheriff of Duval County, Florida and says that in the judgment of the Circuit Court of Duval County, Florida rendered on the 5th day of September, 1929, whereby the defendant in error, E. S. Smith, was ordered discharged from custody under the warrant of detention there exhibited, manifest error hath happened to the great prejudice of plaintiff in error and the State of Florida, where-

fore plaintiff in error prays that said judgment may be reversed by the Supreme Court of Florida for the Following specifications of error, to-wit:

First Assignment of Error

The Court erred in ordering the discharge of the prisoner, E. S. Smith, from custody under the cause of detention certified to the Court.

Second Assignment of Error

The Court erred in holding Chapter 13700 Acts of 1929, unconstitutional in whole or in part as specified in the final judgment.

Filed this September 9th, 1929.

Fred H. Davis, Attorney General of the State of Florida.

[File endorsement omitted.]

[fol. 46] [File endorsement omitted.]

In Circuit Court of Duval County

[Title omitted]

Order Allowing Writ of Error—Filed Sept. 9, 1929

Upon petition of Fred H. Davis, Attorney General of the State of Florida, who applies therefor in behalf of the said State in the name of the respondent W. B. Cahoon, as Sheriff of Duval County, Florida, and in accordance with section 3580 Revised General Statutes of Florida, it is hereby ordered by the Court that a writ of error is hereby allowed to the Supreme Court of the State of Florida from the judgment heretofore entered in this cause on the 5th day of September, 1929 whereby the prisoner, E. S. Smith, was ordered discharged from custody of the respondent, W. B. Cahoon, as Sheriff of Duval County, Florida, under the warrant of detention exhibited by him, which writ of error shall be made returnable to the Supreme Court of the State of Florida on Monday, October 14th, 1929, together with a

transcript of the record of the proceedings had herein, and [fol. 47] it is ordered that the Clerk of the Circuit Court of Duval County, Florida, forthwith issue and record said Writ of Error in the minutes of this Court where the judgment is recorded, and that he likewise cause to be issued a scire facias audiendum errores to be executed upon the defendant in error, E. S. Smith, as provided by law.

Done at Jacksonville, Florida, this September 9th, 1929,

DeWitt T. Gray, Judge Circuit Court.

[File endorsement omitted.]

IN SUPREME COURT OF FLORIDA

W. B. CAHOON, as Sheriff of Duval County, Florida, plaintiff in Error,

vs.

E. S. SMITH, Defendant in Error

[fol. 48] ASSIGNMENT OF ERRORS—Filed in Circuit Court Sept. 9, 1929

Now comes the plaintiff in error, W. B. Cahoon, as Sheriff of Duval County, Florida and says that in the judgment of the Circuit Court of Duval County, Florida rendered on the 5th day of September, 1929, whereby the defendant in error E. S. Smith, was ordered discharged from custody under the warrant of detention there exhibited, manifest error hath happened to the great prejudice of plaintiff in error and the State of Florida, wherefore plaintiff in error prays that said judgment may be reversed by the Supreme Court of Florida for the following specifications of error, to-wit:

First Assignment of Error

The Court erred in ordering the discharge of the prisoner, E. S. Smith, from custody under the cause of detention certified to the Court.

Second Assignment of Error

The Court erred in holding Chapter 13,700 Acts of 1929, unconstitutional in whole or in part as specified in the final judgment.

Filed this September 9th, 1929.

Fred H. Davis, Attorney General of the State of Florida.

[File endorsement omitted.]

[fol. 49] In Circuit Court of Duval County

Writ of Error—Filed Sept. 9, 1929

The State of Florida to the Judge of the Circuit Court of the Fourth Judicial Circuit of the State of Florida, Greeting:

Because in the record and proceedings, and also in the rendition of judgment in a cause that was prosecuted in the Circuit Court held at Jacksonville, within and for the County of Duval, on the 5th day of September, A. D. 1929, between E. S. Smith, Petitioner, and W. B. Cahoon, as Sheriff of Duval County, Florida, as Respondent, manifest error hath happened as it is said; to the great damage of the said W. B. Cahoon, as Sheriff of Duval County, Florida, as by his complaint appears.

We, willing that the error, if any hath been, should be duly amended and full and speedy justice done therein to the said parties, do command you that, if the judgment be therein rendered, you distinctly and openly send us the record and process of the suit aforesaid, with all things touching them, under your seal, together with this Writ, so that we may have them before our Justices of our Supreme Court of the State of Florida, to be held at Tallahassee, on the 14th day of October, A. D. 1929, that, inspecting the record and process aforesaid, we may, for correcting that error therein, cause further to be done what of right and according to law ought to be done.

Witness the Hon. Glenn Terrell, Chief Justice of said Supreme Court, and the seal of the Circuit Court of Duval

county, Fourth Judicial Circuit of Florida, at Jacksonville, this 9th day of September A. D. 1929,

Frank Brown, Clerk Circuit Court of Duval County, Fourth Judicial Circuit of Florida, by R. E. Wil-
[fol. 50] liams, Deputy Clerk. (Court Seal.)

[File endorsement omitted.]

(Endorsed.)

STATE OF FLORIDA,
County of Duval:

Be it remembered, that on this 9th day of September, A. D. 1929, I, Clerk of the Circuit Court in and for said County, have duly recorded the foregoing instrument in the public records of said County in Minutes of the Circuit Court, Book No. 39 on Page 392.

In witness whereof I have hereunto set my hand and the seal of said Court, this day and year above written.

Frank Brown, Clerk, by R. E. Williams, Deputy Clerk.

[File endorsement omitted.]

[fol. 51] IN CIRCUIT COURT OF DUVAL COUNTY

[Title omitted]

WRIT OF SCIRE FACIAS AND RETURN—Filed Oct. 2, 1929

To E. S. Smith, Greeting:

Whereas, W. B. Cahoon, as Sheriff of Duval County, Florida, plaintiff in error in the above styled cause has sued out writ of error in the Circuit Court made returnable, at Tallahassee, Florida, on the 14th day of October A. D. 1929, in a cause in which the plaintiff in error was charged with unlawful imprisonment and a verdict of guilty of unlawful imprisonment was rendered against plaintiff in error;

Therefore, This is to give you notice that the record in this case and the errors assigned will be presented to the Supreme Court of Florida, there to receive whatever order

and judgment that honorable court shall in this case deem just, and have you there this writ.

Witness the Honorable Glenn Terrell, Chief Justice of the said Supreme Court, and the seal of the said Circuit Court, this the 9th day of September, A. D. 1929.

Frank Brown, Clerk Circuit Court Duval County, Florida, by R. E. Williams, Deputy Clerk. (Court Seal.)

(Endorsed.)

Received this writ on the 10th day of September, A. D. 1929, and executed same on the 12th day of September A. D. 1929, in Duval County, Florida, by delivering a true copy [fol. 52] thereof to John E. Mathews, Attorney in Records for the within named Defendant E. S. Smith, and at the same time exhibiting this original writ and explaining the contents thereof.

W. B. Cahoon, Sheriff Duval County, Florida, by T. L. Lamb, Deputy Sheriff.

1 s.	1.50
2 m.	.25
	1.75

[File endorsement omitted.]

[fol. 53] IN CIRCUIT COURT OF DUVAL COUNTY

[Title omitted]

PRÆCIPE FOR TRANSCRIPT OF RECORD—Filed Sept. 9, 1929

To the Honorable Frank Browk, Clerk of the above Court:

You are hereby requested to make up a complete transcript of the record in the above cause, so that the same may be ready for filing in the Supreme Court of Florida on on the return day of the writ of error issued in this cause. You will include in full in said transcript of the record:

1. Petition for writ of habeas corpus with all exhibits.

2. Writ of habeas corpus.
3. Return of Sheriff on Writ of Habeas Corpus.
4. Judgment of Court discharging prisoner dated Sept. 5, 1929.
5. Petition for Allowance of Writ of Error.
6. Order of Court allowing writ of error and fixing return day.
7. Writ of Error, as issued and recorded, showing record and place in minute book where same may be found.
8. Scire Facias ad audidendum errores, showing service thereof or waiver of such service as case may be.
9. Complete Assignment of Errors filed by plaintiff in Error.
10. This præcipe with directions therein contained.
[fol. 54] 11. All papers showing service of copy of assignment of errors, and of copy of this præcipe.
12. And attach thereto a Clerk's certificate in the from prescribed by Rule 103 of the Supreme Court.

Filed this September 9th, 1929.
Fred H. Davis, Attorney General, Counsel for Plaintiff in Error.

I, John E. Mathews, attorney for E. S. Smith, defendant in error, on behalf of said defendant in error, hereby acknowledge due and timely service upon me of a true copy of the foregoing directions and præcipe for making up transcript of the record and also acknowledge due and timely service upon me of a true copy of the plaintiff in error's complete assignment of errors filed in connection with his writ of error taken in this cause.
This September 9th, 1929.
John E. Mathews, Attorney for Defendant in Error.

[File endorsement omitted.]

[fol. 55] Clerk's certificate to foregoing transcript omitted in printing.

[fol. 56] Minute entry of argument and submission February 14, 1930, omitted in printing.

[fol. 57] IN SUPREME COURT OF FLORIDA

W. B. CAHOON, as Sheriff, Plaintiff in Error,

vs.

E. S. SMITH, Defendant in Error

Duval County—Habeas Corpus

OPINION—Filed May 21, 1930

WHITFIELD, P. J.:

This writ of error was allowed and taken under the statute to a final order discharging the petitioner in habeas corpus proceedings. Section 5444, Compiled General Laws 1927; State v. Bethea, 61 Fla. 60, 55 So. 550; Hiers v. Mitchell, 95 Fla. 345, 116 So. 81.

It appears that E. S. Smith owned and operated two motor propelled vehicles in the business of transporting property for compensation upon the public highways between fixed termini and over regular routes, all within the State, not as a common carrier but as a private carrier under special contract; that he has not made application for or received a certificate of public convenience and necessity, and has not paid to the Comptroller an advance payment upon the mileage tax required by Chapter 13700, Laws of Florida 1929, and that such failure being a misdemeanor under the statute, the said E. S. Smith had been committed to the custody of the sheriff for trial but was discharged on habeas corpus, the Circuit Judge holding Chapter 13700 cannot be constitutionally applied to the facts of the case. [fol. 58] The statute entitled

"An act providing for the Supervision and Regulation of Persons, Firms, Corporations and Associations Owning, Controlling, Operating or Managing Motor Vehicles Used in the Business of Transporting Persons or Property for Compensation Over the Pubic Highways of the State; Defining Auto Transportation Companies and Providing Supervision and Regulation Thereof by the Railroad Commission of the State of Florida and Providing for the Enforcement of the Provisions of This Act and for the Punish-

ment of Violations Thereof and Imposing a Mileage Tax and Providing for the Disposition of the Revenue Raised by the Same; and Repealing All Acts Inconsistent with the Provisions of this Act,"

provides that

"The term 'auto transportation company' when used in this Article means every corporation or person, their lessees, trustees or receivers, owning, controlling, operating or managing any motor-propelled vehicle not usually operated on or over rails, used in the business of transporting persons or property for compensation or as a common carrier over any public highway in this State between fixed termini or over a regular route: Provided, that the term 'auto transportation company' as used in this Article, shall not include corporations or persons engaged exclusively in the transportation of children to or from school, or any transportation company engaged exclusively in the transporting agricultural, horticultural, dairy or other farm [fol. 59] products and fresh and salt fish and oysters and shrimp from the point of production to the assembling or shipping point enroute to primary market, or to motor vehicles used exclusively in transporting or delivering dairy products."

"No auto transportation company shall operate any motor vehicle for the transportation of persons or property for compensation on any public highway in this State without first having obtained from the railroad commission a certificate that the present or future public convenience and necessity requires or will require such operation, but no certificate shall be required for operation exclusively within the limits of an incorporated city or town."

"There shall be collected by the Comptroller of the State from every auto transportation company as herein defined to which has been granted a certificate of public convenience and necessity permitting it to engage in the transportation of passengers or freight, or both, a mileage tax of one-half cent per mile on all busses with a capacity of 10 passengers or less and a mil-age tax of three-fourths cent per mile on all busses with a capacity of not more than 20 passengers nor less than 10 passengers, and a mileage tax of one cent

per mile on all busses of the capacity of more than 20 passengers; and a mileage tax of one cent per mile on all trucks with a loaded capacity of less than 5,500 lbs., and a tax of two cents per mile on all trucks with a loaded capacity of 5,500 lbs., or more coming within the terms of this Article for every mile traveled by the motor vehicles of [fol. 60] such auto transportation company over the public highways of this State. This tax shall be paid quarterly beginning October 1, 1929: Provided, that at the time of issuing said certificate of public convenience and necessity and at the beginning of each calendar quarter thereafter the Comptroller of the State shall collect from each holder of such certificate the sum of seventy-five dollars as an advance payment upon the mileage tax herein levied for the ensuing quarter which said amount shall at the end of the quarter be credited to said holder of such certificate and the difference between the said amount and the correct amount of said tax shall be adjusted by the Comptroller with the said holder of such certificate."

Sections 1, 2, 13, 14, Chapter 13700, Acts 1929, sections 1335 (1), 1335 (2), 1335 (13), 7794 (2), Supplement to Compiled General Laws 1927.

The title of the Act does not express, and the body of the Act does not embrace, more than one general subject of legislation and matter properly connected therewith therefore the Act does not violate section 16 of Article III, constitution. The title of the Act is not misleading. The tax levy is matter properly connected with the subject of the regulation of the business that is expressed in the title and covered by the statute, and the levy need not be confined to expeness of regulation. Liberty Highway Co. v. Michigan, 294 Fed. 703.

The statute applies to corporations and persons who use motor propelled vehicles in the business of transporting persons or property for compensation over public highways in this State between fixed termini or over a regular route, whether such transportation for compensation is as [fol. 61] common carriers or as carriers for particular persons under special contract; but the statute does not require private carriers to become common carriers and the

provisions of the statute that are legally applicable only to common carriers are not intended to be applied to and are not applicable to corporations or persons who are not common carriers, though engaged in the transportation to which the statute refers; and the provisions of the statute that are legally applicable to private carriers for compensation, are capable of being effectuated, leaving the provisions that are legally applicable only to common carriers to be applied to such common carriers as are covered by the statute. This does not violate the pertinent principles that are announced in Mich. Pub. Utilities Co. v. Duke, 266 U. S. 570, 45 Sup. Ct. 191, 69 Law Ed. 445, 36 A. L. R. 1105; Frost v. R. R. Comm. of Cal., 271 U. S. 583, 46 Sup. Ct. 605, 70 Law Ed. 1101, 47 A. L. R. 457. The requirements as to procuring certificates of convenience and necessity for doing the business on the highways and as to the tax imposed on the business may be reasonably applied to private carriers for compensation for the privilege of transporting for hire as a business on the public roads of the State, in the exercise of the police and taxing power of the State to conserve the proper use of the public highways and to serve proper sovereign purposes.

The "mileage tax" levied by the statute is a license tax imposed upon the intrastate business of transportation for compensation on the public roads of the State; and being a license tax imposed upon the business by statute for public purposes, it is not in law or in fact a "toll" collected for vehicular passage over the roads, it not being collected for mere passage over the roads or "exacted when and as the privilege of passage is exercised." Carley & Hamilton v. Snook, — U. S. —, 50 Sup. Ct. 204, — Law Ed. —, February 24, 1930. A mileage tax was sustained in Interstate Busses Corp. v. Blodgett, 19 Fed. (2nd) 256, 276 U. S. 245, 48 Sup. [fol. 62] Ct. 230, 72 Law Ed. 551. The mileage tax is "in lieu of all other taxes and fees * * * except ad valorem taxes and registration license taxes" etc., section 14, Chapter 13700. The essential nature of the tax as a license tax on a commercial business is not altered by the circumstance that the license tax is calculated according to road miles that are covered in carrying on the business of intrastate commerce. The tax is laid on the business, not on the mere passage over the highways. Even if the "mile-

age tax" as here imposed may be regarded as a "toll" under the Federal Highway Act, it is not shown that the petitioner operates only upon highways that have been "constructed or reconstructed" under the Federal Act. The State law is operative upon State highways when not in conflict with applicable dominant Federal authority. See Carley v. Snook, — U. S. —, 50 Sup. Ct. 204, — Law Ed. —; Bekins Van Lines v. Riley, — U. S. —, 50 Sup. Ct. 64, — Law Ed. —; Iowa Motor Vehicle Assn. v. Board, — Iowa —, 221 N. W. 364; Williams v. Riley, — U. S. —, 50 Sup. Ct. 63, — Law Ed. —.

There are excepted from the operation of the statute

"corporations or persons engaged exclusively in the transportation of children to and from school, or any transportation company engaged exclusively in transporting agricultural, horticultural, dairy or other farm products and fresh and salt fish and oysters and shrimp from the point of production to the assembling or shipping point enroute to primary market, or to motor vehicles used exclusively in transporting or delivering dairy products."

The exception as to "transporting or delivering dairy products" has reference to transporting dairy products to the primary market from the point of production. Such exceptions have a reasonable basis for just distinctions and do not make the statute operate arbitrarily upon some and [fol. 63] not upon others under practically similar conditions. State v. Le Febvre, — Minn. —, 219 N. W. 167. The organic provision as to equal protection of the laws forbids unjust discriminations, but it does not forbid just and reasonable distinctions and classifications and it does not require absolute and entire equality and uniformity of application in sovereign regulations. The tax provisions do not appear on their face and are not clearly shown to be so unreasonable and arbitrary in amount as to be an abuse of legislative power.

The petitioner has no interest in the statutory disposition of the taxes imposed on his business; and even if the disposition made of such taxes by section 15 of Chapter 13700 be invalid, section 18 of the Act provides for an alternative disposition that is not challenged.

Reversed.

Strum and Buford, JJ., concur.

Terrell, C. J., and Ellis and Brown, JJ., concur in the opinion and judgment.

[fol. 64] IN SUPREME COURT OF FLORIDA

W. B. CAHOON, as Sheriff of Duval County, Plaintiff in Error,

vs.

E. S. SMITH, Defendant in Error

A Writ of Error to the Circuit Court for Duval County

JUDGMENT—May 21, 1930

This cause having heretofore been submitted to the Court upon the transcript of the record of the judgment herein, and briefs and argument of counsel for the respective parties, and the record having been seen and inspected, and the Court being now advised of its judgment to be given in the premises, it seems to the Court that there is error in the said judgment; it is, therefore, considered, ordered and ad-

[fols. 65 & 66] judged by the Court that the said judgment of the Circuit Court be and the same is hereby reversed; it is further ordered by the Court that the plaintiff in error do have and recover of and from the defendant in error his costs by him in this behalf expended, which costs are taxed in the sum of $—, all of which is ordered to be certified to the Court below.

The Opinion of the Court in this cause prepared by Mr. Justice Whitfield was this day ordered to be filed.

[fols. 67 & 68] Petition for rehearing, covering two pages, filed June 20, 1930, omitted from this print. It was denied and nothing more by order July 8, 1930.

[fols. 69 & 70] IN SUPREME COURT OF FLORIDA

[Title omitted]

ORDER DENYING REHEARING—July 8, 1930

A petition for rehearing having been filed in this cause and same having been duly considered it is ordered by the

Court that the said petition be and the same is hereby denied.

[fol. 71] IN SUPREME COURT OF FLORIDA

MANDATE—July 8, 1930

The State of Florida to the Honorable the Judge of the Circuit Court for the Fourth Judicial Circuit of Florida, Greeting:

Whereas, Lately in the Circuit Court of the Fourth Judicial Circuit of Florida, in and for the County of Duval, in a cause wherein E. S. Smith was plaintiff and W. B. Cahoon, as Sheriff of Duval County, was defendant, the Judgment of said Circuit Court was rendered September 5th, 1929, as by the inspection of the transcript of the record of the said Circuit Court which was brought into the Supreme Court of the State of Florida, by virtue of a writ of error, agreeably to the laws of said State in such case made and provided, fully and at large appears;

And whereas, at the January Term of said Supreme Court holden at Tallahassee, A. D. 1930, the said cause came on to be heard before the said Supreme Court on the said transcript of the record and was argued by counsel; in consideration whereof, on the 21st day of May, A. D. 1930, it was considered by said Supreme Court that the said Judgment of the Circuit Court be and the same is hereby reversed; it is further ordered by the Court that the costs in this behalf expended be and the same are hereby taxed against the defendant in error, which costs are taxed at the sum of — Dollars;

[fols. 72 & 73] Therefore you are hereby commanded, That such further proceedings be had in said cause as according to right, justice, the judgment of said Supreme Court, and the laws of the State of Florida, ought to be had, the said Judgment of the Circuit Court notwithstanding.

Witness the Honorable Glenn Terrell, Chief Justice of said Supreme Court, and the Seal of said Court, at Tallahassee, this 8th day of July, 1930.

G. T. Whitfield, Clerk Supreme Court of Florida.
(Seal.)

—— —, 19—. Original mailed to Clerk of Court for —— County.

[fol. 74] IN SUPREME COURT OF FLORIDA

[Title omitted]

PETITION FOR APPEAL, ASSIGNMENT OF ERRORS, AND PRAYER FOR REVERSAL—Filed Aug. 14, 1930

Petition for Appeal

Considering himself aggrieved by the final decision of the Supreme Court of the State of Florida in the above entitled cause, the appellant herein, E. S. Smith, hereby prays that an appeal be allowed to the Supreme Court of the United States herein, and for an order fixing the amount of the bond therein, and for supersedeas.

Assignment of Errors

And the said E. S. Smith assigns the following errors in the record and proceedings in the said cause:

1. The Supreme Court of the State of Florida erred in holding and deciding that the statute of the State of Florida, known as Chapter 13700, Laws of Florida, 1929, is not repugnant to Section 1 of Article XIV of the Amendments of the Constitution of the United States in that in and by such statute the State of Florida seeks to deny to appellant the equal protection of the laws, and discriminates arbitrarily and unreasonably between appellant and others similarly situated.

2. Said Court erred in holding and deciding that Chapter 13700, Laws of Florida, 1929, is not repugnant to Section 1 of Article XIV of the Amendments of the Constitution of the United States in that in and by such statute the State of Florida seeks to levy a tax upon the appellant in denial of equal protection of the laws, particularly in that the tax [fol. 75] imposed arbitrarily and unreasonably, discriminates against appellant, and favors others similarly situated.

3. Said Court erred in holding and deciding that Chapter 13700, Laws of Florida, 1929, is not repugnant to paragraph 2 of Article VI of the Constitution of the United States in that in and by said statute the State of Florida seeks to impose a toll which contravenes Section 9, Chapter 1 of the Federal Highway Act.

4. Said Court erred in holding and deciding that Chapter 13700, Laws of Florida, 1929, is not repugnant to the provisions of the Constitution of the United States and particularly to Section 1 of Article XIV of the Amendments therof, in that in and by said statute the State of Florida seeks to take the private property of appellant for public use without just compensation, and to deprive appellant of his property without due process of law.

5. Said Court erred in holding and deciding that the transportation by appellant of merchandise over the highways of the State of Florida as a private carrier under private contract could be validly prohibited by the State of Florida, and that said Chapter 13700, Laws of Florida, 1929, prohibiting such transportation, does not thereby violate the provisions of Section 1 of Article XIV of the Amendments of the Constitution of the United States, in that in and by said statute the State of Florida seeks to take the private property of appellant for public use without just compensation and to deprive appellant of his property without due process of law.

6. Said Court erred in holding and deciding that the State of Florida may validly convert the private property of appellant, used exclusively in the business of a private carrier, into public carrier property by compelling appellant, as a condition to carrying private property by private contract over the highways of the State of Florida, to subject himself to the jurisdiction of the Railroad Commission of the State of Florida, assume the duties and burdens of a [fol. 76] common carrier, and thus dedicate his property to public use and become a common carrier, and in holding and deciding that Chapter 13700, Laws of Florida, 1929, which compels appellant so to convert his property into a public utility, is not repugnant to Section 1 of Article XIV of the Amendments of the Constitution of the United States

in so far as said Section provides that no State shall take the private property of any person for public use without just compensation, or deprive any person of property without due process of law.

7. Said Court erred in holding and deciding that Chapter 13700, Laws of Florida, 1929, is not repugnant to Section 1 of Article XIV of the Amendments of the Constitution of the United States in that in and by such statute, the State of Florida seeks to convert or transmute appellant, a private contract carrier, against his will, into a common carrier, by legislative fiat or command, and thus deprive appellant of his property without due process of law.

8. Said Court erred in holding and deciding that Chapter 13700, Laws of Florida, 1929, is not repugnant to Section 1 of Article XIV of the Amendments of the Constitution of the United States in that in and by such statute the State of Florida seeks to levy a tax, so capricious, arbitrary and unreasonable, as to amount to confiscation of appellant's property without due process of law.

9. Said Court erred in holding and deciding that Chapter 13700, Laws of Florida, 1929, is not repugnant to Section 10 of Article I of the Constitution of the United States in that in and by said statute the State of Florida seeks to impair the obligation of contract of appellant.

10. Said Court erred in holding and deciding that Chapter 13700, Laws of Florida, 1929, is not repugnant to Section 1 of Article XIV of the Amendments of the Constitu-
[fol. 77] tion of the United States in that in and by said statute the State of Florida seeks to deny to appellant the liberty of contract without due process of law.

11. Said Court erred in holding and deciding that Chapter 13700, Laws of Florida, 1929, is not repugnant to Section 1 of Article XIV of the Amendments of the Constitution of the United States in that in and by said statute the State of Florida seeks to enforce a penal statute which as construed by said Court, is so vague, uncertain and indefinite that it denies to appellant due process of law.

12. Said Court erred in holding and deciding that Chapter 13700, Laws of Florida, 1929, is not repugnant to Sec-

tion 1 of Article XIV of the Amendments of the Constitution of the United States, in that in and by said statute the State of Florida seeks to deprive appellant of his liberty without due process of law.

13. Said Court erred in holding and deciding that the Legislature of the State of Florida, in and by Chapter 13700 Laws of Florida, 1929, could require appellant, a private contract carrier, not engaged in any public business, as a necessary prerequisite to his use of the highways of the State of Florida, to secure a certificate of public convenience and necessity from the Railroad Commission of the State of Florida, thus depriving appellant of his property without due process of law, and denying appellant the equal protection of the laws, as guaranteed to him by Section 1, Article XIV of the Amendments of the Constitution of the United States.

14. Said Court erred in reversing the final judgment of the Circuit Court of the Fourth Judicial Circuit of the State of Florida, in and for Duval County, made and entered on the 5th day of September, A. D. 1929, and in not giving to appellant his rights under the Constitution of the [fols. 78 & 79] United States, as claimed, and set forth in the record in this cause.

Prayer for Reversal

For which errors appellant, E. S. Smith, prays that the said judgment of the Supreme Court of the State of Florida, dated July 8th, 1930, in the above entitled cause, be reversed and a judgment entered in favor of appellant, and for costs.

John C. Mathews, Counsel for Appellant.

[fol. 80] In Supreme Court of Florida

[Title omitted]

Order Allowing Appeal—Filed Aug. 14, 1930

The Appellant in the above entitled cause, having prayed for the allowance of an appeal in this cause to the Supreme

Court of the United States from the judgment made and entered in the above entitled cause by the Supreme Court of the State of Florida, on the 8th day of July, 1930, and from each and every part thereof and having presented and filed his petition for appeal, assignment of errors, and prayer for reversal, pursuant to the statutes and the rules of the Supreme Court of the United States in such case made and provided:

It is now here ordered that an appeal be, and the same is hereby allowed to the Supreme Court of the United States from the Supreme Court of the State of Florida in the above entitled cause, as provided by law, and it is further ordered that the Clerk of the Supreme Court of the State of Florida shall prepare and certify a transcript of the record, proceedings, and judgment in this cause and transmit the same to the Supreme Court of the United States, so that he shall have the same in said Court within thirty days of this date.

And it is further ordered that security for costs on appeal be fixed in the sum of $1,000 bond to be approved by the Chief Justice of the State of Florida, and when so approved [fols. 81 & 82] said bond shall act as a supersedeas, and all further proceedings in the Court below shall be stayed pending the outcome of the appeal.

Glenn Terrell, Chief Justice Supreme Court of the State of Florida.

Dated. Aug. 14, 1930.

[fols. 83-85] Citation, in usual form, showing service on Fred H. Davis, omitted in printing.

[fols. 86-89] Bond on appeal for $1,000 approved; omitted in printing.

[fol. 90] IN SUPREME COURT OF FLORIDA

[Title omitted]

STIPULATION FOR RECORD—Filed Aug. 26, 1930

The parties hereto by their attorneys of record hereby stipulate that the Clerk of the Supreme Court of the State

of Florida, in preparing and making up the Record in this cause, shall include the entire record as follows:

1. The copy of the record brought up from the Circuit Court of the Fourth Judicial Circuit of the State of Florida in and for Duval County, which was considered by the Supreme Court of the State of Florida.

2. A copy of the Decision or Opinion of the Supreme Court of the State of Florida.

3. A copy of the final Mandate or Judgment of the Supreme Court of the State of Florida.

4. A copy of Petition for Appeal, and Assignment of Errors and Prayer for Reversal.

5. Copy of the Order of the Chief Justice of the Supreme Court of the State of Florida allowing the Appeal.

6. The original Citation together with the acceptance of service.

7. The Order fixing bond.

[fol. 91] 8. The Bond as filed and approved.

9. A copy of this Stipulation.

In making up an preparing the Record the Clerk will copy all papers except the Citation and the acceptance of service thereon, and as to such Citation and acceptance of service he will include the originals.

After preparing and making up the Record the Clerk will certify to the same and will impress his Seal thereon.

John E. Mathews, Attorney of Record for the Appellant. Fred H. Davis, Attorney General of the State of Floida and Attorney for the Appellee.

[fol. 92] Clerk's certificate to foregoing transcript omitted in printing.

[fol. 93] IN SUPREME COURT OF THE UNITED STATES

STATEMENT OF POINTS TO BE RELIED UPON AND DESIGNATION TO PRINT ENTIRE RECORD—Filed Sept. 23, 1930

Comes now the Appellant and adopts his Assignments of Error, as his statement of the points to be relied upon, and represents that the whole of the record, as filed, is necessary for the consideration of the case. (Assignments

of Error are found on pages 74 through 78 of the Transcript of Record.)

John W. Davis, Counsel for Appellant.

[fol. 94] To Fred H. Davis, Attorney General of Florida, counsel of record for the appellee, W. B. Cahoon, Sheriff of Duval County, Florida:

You are hereby notified that a Statement of Points to be relied upon and of Designation of the Parts of the Record to be Printed in the above entitled cause will be filed in the Supreme Court of the United States on or before the 26th day of September, 1930. A copy of the Statement of Points to be relied upon and of Designation of the Parts of the Record to be Printed is served upon you herewith.

E. S. Smith, Appellant.

Service accepted this 20th day of September, 1930.

Fred H. Davis, Attorney General, Counsel for Appellee.

[fols. 95-98] [File endorsement omitted.]

Endorsed on cover: File No. 35,371. Florida Supreme Court. Term No. 449. E. S. Smith, Appellant, vs. W. B. Cahoon, Sheriff of Duval County, Florida. Filed September 11, 1930. File No. 35,371.